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No. 21

In the Supreme Court of the United States

October Term, 1948

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	7
Argument	8
I. The failure of petitioner's appeal papers to refer specifically to the district court's minute order of August 5, 1946, was not a substantive defect	
II. The provisions of Section 2 of the Suits in Admiralty Act prescribing the districts in which suits shall be brought are not jurisdictional but waivable as matter of venue	13
Conclusion	18
Appendix	20

CITATIONS

Cases:

Aakre, The, 31 F. Supp. 8, affirmed, 122 F. 2d 469	9
Abbott v. *United States*, 61 F. Supp. 989	14
American Stevedores v. *Porello*, 330 U. S. 446	16
Bainbridge v. *Merch. & Miners Co.*, 287 U. S. 278	16
Barnes v. *United States*, 67 F. Supp. 571	15
Better Packages, Inc. v. *L. Link & Co.*, 74 F. 2d 679, certiorari denied, 295 U. S. 751	10
Bowles v. *Rice*, 152 F. 2d 543	10
Canadian Aviator, Ltd. v. *United States*, 324 U. S. 215	16
Carroll v. *United States*, 133 F. 2d 690	14
Dollar S. S. Line v. *Matson Navigation Co.*, 23 F. 2d 554, certiorari denied, 278 U. S. 598	9, 10
Hansen v. *United States*, 66 F. Supp. 759	15
Hill v. *Chicago & Evanston R. R. Co.*, 140 U. S. 52	10
Kelley v. *Everglades District*, 319 U. S. 415	9
Kunglig Jarnvagsstyrelsen v. *United States*, 19 F. 2d 761	14, 18
Liberty Mutual Ins. Co. v. *Pillsbury*, 154 F. 2d 559, certiorari denied, 329 U. S. 717	12
Lutjens v. *United States*, 24 F. 2d 102	10
McGhee v. *United States*, 62 F. Supp. 224, reversed, 154 F. 2d 101	14, 15
Matton Oil Trf. Corp. v. *The Dynamic*, 123 F. 2d 999	9

809136—48——1

Cases—Continued Page

Metaxas v. *United States*, 68 F. Supp. 667 15
Miller v. *Hatfield*, 309 U. S. 1 11
Nahmeh v. *United States*, 267 U. S. 122 18
Panama R. R. Co. v. *Johnson*, 264 U. S. 375 16
Parks v. *Turner*, 12 How. 39 11
Rodinciuc v. *United States*, 74 F. Supp. 284 14
Sage v. *Railroad Co.*, 96 U. S. 712 10
Sawyer v. *United States*, 66 F. Supp. 271 14
Schnell v. *United States*, 166 F. 2d 479, certiorari denied, 334 U. S. 838 14
Stradford v. *Wagner*, 64 F. 2d 749 10
Thames & Mersey Ins. Co. v. *United States*, 237 U. S. 19 15
United States v. *Borcherling*, 185 U. S. 223 17
United States v. *Hvoslef*, 237 U. S. 1 15

Statutes:

Act of June 25, 1948 (Pub. Law 773, 80th Cong., 2d sess.) 10, 11, 12, 18
Jones Act, Act of June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U. S. C. 688 16
Judicial Code (28 U. S. C. (1946 ed.) 41), Sec. 24 16
Judicial Code (28 U. S. C. 225 (a)), Sec. 128 (a) 6, 8
Naval Appropriation Act for 1947 (60 Stat. 481, 501), Sec. 202 3
Public Vessels Act of March 3, 1925 (43 Stat. 112; 46 U. S. C. 781–790), Sec. 2 15
R. S. 954 (former 28 U. S. C. 777), repealed by Pub. Law 773, 80th Cong., 2d sess., Sec. 39 ..... 10, 11, 12
Suits in Admiralty Act (Act of March 9, 1920, c. 95, 41 Stat. 525, 46 U. S. C. 741–743 *et seq.*):
Sec. 1 20
Sec. 2 ..... 7, 8, 13, 16, 20
Sec. 3 ..... 14, 21
Tucker Act (24 Stat. 506; 28 U. S. C. (1946 ed.) 762), Sec. 5 15
28 U. S. C. 1404, 1406 18
28 U. S. C. 2107 (former 28 U. S. C. 230) 12

Miscellaneous:

Admiralty Rule 46½ 9
1 Benedict, *Admiralty*, (6th ed. 1940) 122 9
H. Rep. 308, 80th Cong., 1st sess., p. A239 12
Rules of Civil Procedure;
Rule 81 (a) 12
War Shipping Administration Form GAA 4–4–42, 7 Fed. Reg. 7561, 7562; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44 3

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 20

EARL P. HOINESS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of California (R. 17–21) is reported at 75 F. Supp. 289. The majority and dissenting opinions of the Court of Appeals for the Ninth Circuit (R. 30–34) are reported at 165 F. 2d 504.

JURISDICTION

The decree of the Court of Appeals for the Ninth Circuit dismissing petitioner's appeal was entered November 18, 1947 (R. 34). The petition for certiorari was filed on February 17, 1948,

and was granted on March 29, 1948. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The writ of certiorari granted in this cause (R. 36) is limited to questions (1) (b) and (2) (a) as presented by the petition (Pet. 6–8). The United States did not oppose the granting of the writ with respect to these two questions, which may be summarized as follows:

1. Whether the circuit court of appeals erred in dismissing petitioner's timely appeal of October 18, 1946, taken specifically from the district court's formal decree of October 14, 1946, purporting to dismiss the libel for lack of jurisdiction, on the ground that the appeal failed to specify that it was also taken from the district court's original final judgment embodied in its minute order of August 5, 1946, which had previously dismissed the libel on identical grounds.

2. Whether the provisions of Section 2 of the Suits in Admiralty Act respecting the district in which suit against the United States under that section shall be brought are jurisdictional or waivable matters of venue.

STATUTE INVOLVED

The pertinent provisions of the Suits in Admiralty Act of March 9, 1920 are set forth in the Appendix, *infra*, pp. 20–21.

STATEMENT

Petitioner Earl P. Hoiness was a civil service seaman on the S. S. ESCANABA VICTORY, a vessel owned and operated by the United States through the former War Shipping Administration,[1] which employed American-South African Line, Inc., as ship's husband or general agent to attend to the accounting and certain other shoreside business operations of the vessel in accordance with the wartime standard form of agreement.[2] On January 16, 1945, while the vessel was docked at the port of San Francisco, California, petitioner was seriously injured when he was shot by a member of the naval armed guard or gun crew which was placed aboard the vessel by the Navy Department. To recover for his injuries, petitioner brought the present suit in admiralty against the United States, the War Shipping Administration, the American-South African Line, Inc., and others, seeking benefits under the Second Seamen's War Risk Insurance Policy, damages under the Jones Act, and maintenance and wages under the federal maritime law. The War Shipping Administration and American-South Afri-

[1] By Section 202 of the Naval Appropriation Act for 1947 (60 Stat. 481, 501), the War Shipping Administration was abolished and its functions, powers, and duties were transferred to the United States Maritime Commission.

[2] War Shipping Administration Form GAA 4-4-42, 7 Fed. Reg. 7561, 7562; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44.

can Line were later dismissed from the case, and the United States is the sole respondent in this Court (Pet. 3).

Petitioner's libel, which was filed in the United States District Court for the Northern District of California, invoked the jurisdiction of that court *in personam*, pursuant to the Suits in Admiralty Act of 1920, together with certain acts amendatory thereof (R. 2). It did not allege that petitioner was a resident of the Northern District of California or that the vessel involved was found in that district at the time suit was filed. Instead, the libel alleged that the United States, the War Shipping Administration, and American-South African Line maintained offices and principal places of business at San Francisco and were within the jurisdiction of the court (R. 2). The United States did not appear specially, and no exceptions or motion to dismiss were filed. The United States answered to the merits, stating that "respondent leaves all questions of jurisdiction to the court" (R. 7, 8). Thereafter the case was heard on April 4, 1946, and submitted to the district judge on the evidence of both sides, including petitioner's testimony that he lived at Portland, Oregon, which had been his home during recent years (R. 12, 13).

The district court, of its own motion, raised the question of its jurisdiction and, on August 5, 1946, filed an opinion holding that the Suits in

Admiralty Act provides the exclusive remedy in admiralty against the United States and the War Shipping Administration for maritime tort; that there was no allegation in the libel that libelant resided or had his principal place of business within the court's jurisdiction, or that the vessel at the commencement of the action was found within the district, so as to give the court jurisdiction under that act; and that is was, therefore, without jurisdiction of the cause (R. 17–21). Pursuant to the opinion, a minute order dismissing the libel for lack of jurisdiction was entered August 5, 1946.[3] Petitioner thereupon filed a motion to reopen the case for the purpose of amending the libel to conform to the proof and for further proceedings (R. 28). Although expressly consented to by the United States (R. 29), this motion was denied by the district court on August 15, 1946 (R. 22–23). Thereafter, on October 14, 1946, the district court filed findings of fact, conclusions of law, and a formal decree purporting to dismiss the libel (R. 23–24), and petitioner appealed.

Petitioner's intention to appeal from the dismissal of his libel originally contained in the district court's minute order of August 5, 1946, was clearly shown by his assignments of error (R. 26),

[3] The printed record shows that the minute order was filed on August 15 (R. 21), but the certified transcript on file with the Clerk of this Court shows that the order was filed on August 5 (Tr. 22).

but his petition for appeal (R. 25) named specifically only the court's formal decree of October 14, 1946. The appeal was allowed by the district court in an order filed on October 18, 1946, well within the three-month appeal period from the entry of the minute order of August 5, 1946 (R. 26).

The appeal was dismissed by the Court of Appeals for the Ninth Circuit which held, Judge Healy dissenting, that the minute order of August 5, 1946, was the "final decision" within the meaning of Section 128 (a) of the Judicial Code, 28 U. S. C. (1946 ed.) 225 (a), and was appealable; that no other final decision was necessary; and that "the so-called decree of October 14, 1946, was not a final decision and was not appealable" (R. 31–32). The majority opinion stated that while the minute order directed respondent's counsel to submit findings of fact and conclusions of law, there was no reason for such direction, since the district court's opinion contained everything that was necessary for the disposition of the case; that the district court's decision was based on the libel and not on the evidence; and that the formal findings, conclusions, and decree filed on October 14, 1946, did not modify or add to what was contained in the district court's opinion and minute order of August 5, 1946 (R. 31). In his dissenting opinion, Judge Healy emphasized that the appeal which was taken on October 18 was timely as to

the minute order of August 5, no less than as to the formal decree of October 14, and concluded that there was no reason why the appeal should not be entertained as taken from the minute order (R. 34).

SUMMARY OF ARGUMENT

I

Since the minute order of August 5, 1946 was the final decision of the district court and the subsequent filing of the findings of fact, the conclusions of law, and the formal decree of October 14, 1946 were unnecessary and did not affect the finality of the minute order, the appeal to the court of appeals should have been taken from the August 5 order. Nevertheless, the dismissal of the appeal was unjustified, for although the appeal papers specified the decree of October 14, rather than the minute order of August 5, the appeal was timely as to that order and the assignments of error were framed to attack it as well as the formal decree. The defect was, consequently, one of form and not of substance, and an amendment of the appeal to cure the defect should have been permitted.

II

The provisions of Section 2 of the Suits in Admiralty Act prescribing the district in which a libel *in personam* against the United States may be brought are not jurisdictional in char-

acter but are solely matters of venue, waivable at the option of the United States. Although it has not had occasion to consider the question so far as Section 2 is concerned, this Court has construed similar provisions in other statutes as relating to venue rather than to jurisdiction. It has deemed such a construction to be in harmony with the general purpose of the particular statutes involved, and supported by the congressional policy of vesting the federal courts with a general jurisdiction expressed in terms applicable to all of them and regulating the venue by separate provisions designating the districts in which suits may be brought. Since the purpose of the Suits in Admiralty Act is to grant relief against the United States in its own courts to seamen, a class of persons whose calling often causes them to be without permanent residence, it is unlikely that the Congress would have intended to prohibit them from instituting an *in personam* suit in any district court in which the United States might be willing to defend.

ARGUMENT

I

THE FAILURE OF PETITIONER'S APPEAL PAPERS TO REFER SPECIFICALLY TO THE DISTRICT COURT'S MINUTE ORDER OF AUGUST 5, 1946, WAS NOT A SUBSTANTIVE DEFECT

We submit that the court below correctly held that the minute order of August 5, 1946, was the final decision of the district court within the

meaning of Section 128 (a) of the Judicial Code (28 U. S. C. (1946 ed.) 225 (a)), from which the appeal should have been taken, and that the subsequent filing of findings of fact and conclusions of law and the entry of a formal decree on October 14, 1946, were unnecessary and did not affect the finality of the August 5 minute order. We believe, however, that petitioner's appeal papers were sufficient to bring the matter within the jurisdiction of the court below, and that the dismissal of petitioner's appeal was erroneous.

The opinion of the district court, pursuant to which the minute order of August 5, 1946, was made and entered, noted the absence from the libel of the allegations necessary to give the court jurisdiction and referred to the provisions of the statutes which made such allegations indispensable. (R. 19–20). In the circumstances, the findings and conclusions stated in the opinion were a sufficient compliance with Admiralty Rule 46½, since they made it unnecessary for the appellate court to probe the evidence in order to ascertain the facts or to speculate on the legal grounds which formed the basis of the district court's decision. See *Kelly* v. *Everglades Drainage District*, 319 U. S. 415, 422; *The Aakre*, 31 F. Supp. 8, 23 (S. D. N. Y.), affirmed, 122 F. 2d 469, 474 (C. C. A. 2); 1 Benedict, *Admiralty*, (6th ed. 1940) 122; cf. *Matton Oil Trf. Corp.* v. *The Dynamic*, 123 F. 2d 999, 1001 (C. C. A. 2); *Dol-*

lar SS. Line v. *Matson Navigation Co.*, 23 F. 2d 554, 556 (C. C. A. 9), certiorari denied, 278 U. S. 598. The minute order of August 5, 1946, being a final decision, the subsequent entry of additional findings and conclusions did not change its character (*Bowles* v. *Rice*, 152 F. 2d 543, 544 (C. C. A. 6); *Lutjens* v. *United States*, 24 F. 2d 102 (C. C. A. 9)); nor did the filing of a formal decree affect its finality (*Better Packages, Inc.* v. *L. Link & Co.*, 74 F. 2d 679 (C. C. A. 2), certiorari denied, 295 U. S. 751; *Stradford* v. *Wagner*, 64 F. 2d 749 (C. C. A. 10); cf. *Hill* v. *Chicago & Evanston R. R. Co.*, 140 U. S. 52; *Sage* v. *Railroad Co.*, 96 U. S. 712, 714).

We believe, however, despite the finality of the minute order of August 5, that the action of the court below in dismissing the appeal was incorrect. Although the appeal papers did not specify the minute order, the appeal was timely as to that order, and the assignments of error were framed to attack that order as well as the later formal decree. Plainly, then, the defect in the appeal was not one of substance, but was of such a technical nature as to have warranted the court below in disregarding it under R. S. 954 (28 U. S. C. (1946 ed.) 777).

R. S. 954, which, after the appeal in this case was dismissed, was expressly repealed effective September 1, 1948, by Section 39 of the Act of June 25, 1948 (Pub. Law 773, 80th Cong., 2d Sess.), provided as follows:

SEC. 954. No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect, or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe.

R. S. 954 was a remedial statute and as such it received a liberal construction. As so construed, appellate courts, as well as others, were required to disregard the niceties of form and give judgment according to the right of the cause. *Miller* v. *Hatfield,* 309 U. S. 1; *Parks* v. *Turner,* 12 How. 39, 46. Consequently, in view of the technical nature of the defect in the appeal, it was the duty of the court below to direct an amendment thereof which would specify that it was taken from the minute order of August 5, and then to determine the appeal on its merits.

As we have indicated above, R. S. 954 was repealed as of September 1, 1948, but it does not appear that its repeal affects the instant case. Section 39 of the Act of June 25, 1948, *supra*, which repealed R. S. 954, as well as other sections of law, provided that "Any rights or liabilities now existing under such [repealed] sections or parts thereof shall not be affected by this repeal."[4] Thus, R. S. 954 would still seem to require that the appeal herein be entertained.

The reliance of the majority of the court below upon its previous decision in *Liberty Mutual Ins. Co.* v. *Pillsbury*, 154 F. 2d 559 (C. C. A. 9), certiorari denied, 329 U. S. 717, is unfounded. In that case the appeal was taken more than three months after the minute order dismissing the libel, although within three months from a later formal decree, and the court correctly held that it lacked jurisdiction because the appeal was not timely.[5] That situation did not exist in the instant case, since the appeal was timely as to the minute order and in substance was based upon it. Consequently, amending the appeal in this case would not be

[4] Although it is stated expressly in the legislative history of the repealing act (Act of June 25, 1948, *supra*) that the reason for repealing R. S. 954 was that the subject matter thereof was "Covered by Rules 1, 15, and 61 of the Federal Rules of Civil Procedure" (see H. Rep. 308, 80th Cong., 1st sess., p. A239), it is not clear that those rules apply to the instant case, since Rule 81 (a) (1) of the Federal Rules expressly provides that "These rules do not apply to proceedings in admiralty."

[5] Former 28 U. S. C. 230, now 28 U. S. C. 2107.

violative of the appeal statute, but, on the contrary, would, by correcting a defect which was not substantive, permit the case to be decided according to the right of the cause.

We submit accordingly that the court below should have entertained the appeal.

II

THE PROVISIONS OF SECTION 2 OF THE SUITS IN ADMIRALTY ACT PRESCRIBING THE DISTRICTS IN WHICH SUITS SHALL BE BROUGHT ARE NOT JURISDICTIONAL BUT WAIVABLE AS MATTERS OF VENUE

Section 2 of the Suits in Admiralty Act, *infra*, pp. 20–21, authorizes the bringing of a libel *in personam* against the United States in all cases where a proceeding in admiralty could be maintained at the time of the commencement of the action if the vessel involved were privately owned or operated, or the cargo involved were privately owned and possessed. That section further provides that "Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found."

The libel herein failed to allege that the libelant was a resident of the Northern District of California;* nor did it allege that the vessel involved

* In fact, petitioner's own testimony shows that he resided in the District of Oregon (R. 12–13).

was found within the jurisdiction of that court (R. 1–7, 19, 20). The district court, in dismissing the libel, held it fatally defective on the ground that the provisions of Section 2 of the Suits in Admiralty Act directing where suits shall be brought are jurisdictional (R. 20). We agree with petitioner that, in a case like the present one asserting liability on *in personam* principles, these provisions relate solely to venue and may be waived.[7]

The question whether the provisions of Section 2 of the Suits in Admiralty Act are jurisdictional has not been determined by this Court nor expressly by any court of appeals.[8] How-

[7] Where the libelant asserts liability on *in rem* principles under Section 3 of the Suits in Admiralty Act (46 U. S. C. 743, *infra*, p 21), the presence within the district where the libel is filed of the vessel sought to be charged is a jurisdictional requirement. *Schnell* v. *United States*, 166 F. 2d 479 (C. C. A. 2), certiorari denied, 334 U. S. 833.

[8] The Second Circuit Court of Appeals has intimated that the provisions of Section 2 may not be jurisdictional in suits brought on *in personam* principles. *McGhee* v. *United States*, 154 F. 2d 101, 104 (C. C. A. 2); *Kunglig Jarnvagsstyrelsen* v. *United States*, 19 F. 2d 761, 762–763 (C. C. A. 2) Cf. *Carroll* v. *United States*, 133 F. 2d 690, 692–693 (C. C. A. 2). The admiralty district courts which have passed upon this point are sharply divided. Holding the statutory requirement to be jurisdictional and not waivable are the instant case (District Court for the Northern District of California, St. Sure, J.) (R. 21, 23–24); *Sawyer* v. *United States*, 66 F. Supp. 271, 276 (S. D. N. Y., Kennedy, J.); and *Rodinciuc* v. *United States*, 74 F. Supp. 284, 287 (E. D. Pa., Ganey, J.). Of the view that the provisions relate to venue and therefore may be waived are *Abbott* v. *United States*, 61 F. Supp. 989,

ever, this Court has held that similar provisions in other statutes relate to venue rather than jurisdiction. Prior to the enactment of the Suits in Admiralty Act, the requirement found in Section 5 of the Tucker Act (24 Stat. 506; 28 U. S. C. (1946 ed.) 762) that suits brought against the United States in the district courts shall be brought "in the district where the plaintiff resides" was held by this Court to be merely a formal requirement which could be waived and would be deemed to be waived in the absence of specific objection upon that ground before pleading on the merits. *United States* v. *Hvoslef*, 237 U. S. 1, 11–12; *Thames & Mersey Ins. Co.* v. *United States*, 237 U. S. 19, 24. The Public Vessels Act of March 3, 1925 (43 Stat. 112; 46 U. S. C. 781–790), which was enacted to provide relief against the Government for damages caused in connection with the operation of its public vessels similar to that which had been previously provided by the Suits in Admiralty Act in connection with the operation of its vessels when employed as merchant vessels, likewise contains, in Section 2 thereof (46 U. S. C. 782), provisions prescribing the districts in which suits filed under

991–992 (S. D. N. Y., Knox, J.) (semble); *McGhee* v. *United States*, 62 F. Supp. 224, 226–227 (S. D. N. Y., Bright, J.); and *Metaxas* v. *United States*, 68 F. Supp. 667, 669 (S. D. Calif., Mathes, J.). See, also, *Haesen* v. *United States*, 66 F. Supp. 759, 760–761 (E. D. N. Y.); *Barnes* v. *United States*, 67 F. Supp. 571, 573 (S. D. N. Y.).

that Act shall be brought. In *Canadian Aviator, Ltd.* v. *United States*, 324 U. S. 215, 216, 224, a suit brought under that Act, this Court, after stating that the jurisdiction of the district court was based on Section 24 of the Judicial Code (28 U. S. C. (1946 ed.) 41), referred to the provisions of Section 2 of the Public Vessels Act as relating to venue. Since these provisions of the Public Vessels Act are to be treated as relating to venue, the similar provisions of the Suits in Admiralty Act should be treated likewise, as the two Acts are similar in structure and purpose. See *American Stevedores* v. *Porello*, 330 U. S. 446, 452.

The rationale of the decisions relating to similar provisions of other acts was that they should be construed in harmony with the general purpose of the particular statute and the recognized policy of Congress with regard to legislation concerning the jurisdiction of federal courts.[9] In *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 384, this Court summarized the policy as follows:

> * * * Beginning with the Judiciary Act of 1789, Congress has pursued the pol-

[9] The provision in the Jones Act; Act of June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U. S. C. 688, that "jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located," was held to relate only to venue, conferring a personal privilege which the defendant may waive if he enters a general appearance before or without claiming it. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 383–385. See *Bainbridge* v. *Merch. & Miners Co.*, 287 U. S. 278, 279.

> icy of investing the federal courts—at first the Circuit Courts, and later the District Courts—with a general jurisdiction expressed in terms applicable alike to all of them and regulating the venue by separate provisions designating the particular district in which a defendant shall be sued, such as the district of which he is an inhabitant or in which he has a place of business,—the purpose of the venue provisions being to prevent defendants from being compelled to answer and defend in remote districts against their will. This policy was carried into the Judicial Code, and is shown in §§ 24 and 51, one embodying general jurisdictional provisions applicable to rights under subsequent laws as well as laws then existing, and the other containing particular venue provisions. * * *

The purpose of the Suits in Admiralty Act is to grant relief against the United States in its own courts. Unlike private parties, the United States is ubiquitous throughout the jurisdiction of its courts. See *United States* v. *Borcherling*, 185 U. S. 223, 233. Having no particular place of residence, the United States will not ordinarily experience inconvenience in defending an *in personam* suit in a district other than that of the libelant's residence. In fact, the convenience of the United States is often best served by the trial of such cases at the principal maritime ports. Since the purpose of the statute includes the granting of relief to seamen, a class of persons

whose calling often causes them to be without permanent residence, it is unlikely that the Congress would, with the broad purpose of the statute in mind, intend to prohibit a seaman from instituting an *in personam* suit in any United States district court where the United States may be willing to defend. Indeed, the final sentence of Section 2, providing that "Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States," suggests that the Congress did not so intend.[10] We accordingly submit that the provisions of Section 2 do not restrict the substantive jurisdiction over *in personam* actions brought under that section to the district courts specified therein, where the United States disregards defective venue or otherwise shows a willingness that the suit may be brought and tried in another district.

CONCLUSION

For the foregoing reasons, we are not disposed to disagree with petitioner's contention that the judgments of the courts below failed to accomplish substantial justice. In the circumstances,

[10] This provision not only furnishes a means for correcting a defect in venue, but also makes it possible to transfer a cause to another district where necessary parties may reside or have their place of business. See *Nahmeh* v. *United States*, 267 U. S. 122, 126; *Kunglig Jarnvagsstyrelsen* v. *United States*, 19 F. 2d 761, 763 (C. C. A. 2). Cf. 28 U. S. C. 1404, 1406, enacted into law by Pub. Law 773, 80th Cong., approved June 25, 1948.

we do not oppose their reversal and a remand of the cause to the district court for a decision on the merits.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

HARRY I. RAND,
JOHN R. BENNEY,
ALVIN O. WEST,
Attorneys.

OCTOBER 1948.

APPENDIX

Sections 1 and 2 and Section 3, in pertinent part, of the Suits in Admiralty Act (Act of March 9, 1920, c. 95, 41 Stat. 525, 46 U. S. C. 741–743, *et seq.*) provide as follows:

> SEC. 1. That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company.
>
> SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of

them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. * * * If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. * * *.

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